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March 27, 2018

Prosecutor's Report Regarding the Death of Tory Sanders on May 5, 2017, While in the Protective Custody of the Mississippi County Sheriff's Office

Summary:

On May 5, 2017, Tory Sanders died in a cell in the jail of the Mississippi County Sheriff's Office. While Mr. Sanders was in the protective custody of the Mississippi County Sheriff's Office, he suffered a mental disturbance beginning before 2:00 pm, becoming increasingly excited and unruly throughout the day. Around 7:18 pm, several jailers and law enforcement officers, led by then-Mississippi County Sheriff Cory A. Hutcheson, made a forced entry into Mr. Sanders' jail cell. Mr. Sanders died during or shortly after the ensuing altercation.

This memorandum concludes that no criminal homicide charges should be filed against the jailers and officers involved in the forced entry into Mr. Sanders' jail cell on May 5, 2017. A comprehensive investigation by the Missouri State Highway Patrol (MSHP), with support of the Missouri Attorney General's Office (AGO), has discovered insufficient evidence to establish that the conduct of those persons caused Mr. Sanders' death. Three medical experts—one retained by the Mississippi County Coroner, one retained by the victim's family, and one retained by federal investigators—have unanimously concluded that Mr. Sanders died as a result of a medical condition known as excited delirium. According to the medical evidence, this excited delirium manifested in the mental disturbance that began several hours before the jailers and officers made the forced entry into Mr. Sanders' cell. Thus, it is unlikely that the forced entry and ensuing altercation had a determinative impact on Mr. Sanders' ultimately fatal medical condition. Because causation is a necessary element of any applicable homicide crimes, the investigation has not discovered sufficient evidence to warrant homicide charges.

However, Mr. Sanders' death was the latest in a series of deaths under troubling circumstances in the Mississippi County Jail in recent years. Although the AGO is not pursuing homicide charges arising directly from the tragic death of

Mr. Sanders, the AGO has commenced a broader investigation into the conduct and practices of officers and jailers in that facility to determine whether any other civil or criminal proceedings might be warranted due to these other deaths.

This memorandum does not address whether civil liability should attach to the conduct of any officers in connection with Mr. Sanders' death. In addition, this memorandum makes no statement regarding other civil and criminal proceedings against former Sheriff Cory A. Hutcheson that the AGO is currently pursuing.

Discussion:

On May 5, 2017, Tory Sanders died in a cell in the Mississippi County Sheriff's Office jail. Mr. Sanders was being held in protective custody at the time of his death, awaiting transfer to a mental health facility. Mr. Sanders suffered a mental disturbance during the afternoon of May 5 while in protective custody, commencing shortly before 2:00 pm, and he became excited and unruly in the course of the afternoon. In the early evening, around 7:18 pm, several jailers and law enforcement officers, led by then-Sheriff Cory A. Hutcheson, made a forced entry into Mr. Sanders' cell in attempt to subdue Mr. Sanders. Mr. Sanders vigorously resisted this attempt to restrain him. Mr. Sanders died during or shortly after the ensuing altercation.

The MSHP has conducted an investigation into Mr. Sanders' death, beginning promptly after the incident. The AGO, which was appointed special prosecutor on May 5, 2017, has worked with the MSHP and provided legal support during the investigation. The MSHP and the AGO have also cooperated with federal authorities in their parallel civil-rights investigation into Mr. Sanders' death.

The MSHP's investigation has been thorough and comprehensive. MSHP has interviewed the individuals present during the altercation with Mr. Sanders, including Mississippi County Sheriff's Office deputies and jailers and City of Charleston police officers. The MSHP has also seized and reviewed evidence from a body camera, jail video, cell phones and other items. Two autopsies have been performed by forensic pathologists. First, Dr. Russell D. Deidiker performed an autopsy at the request of the Mississippi County Coroner. Second, Dr. Thomas Deering, who serves as the Deputy Chief Medical Examiner for Davidson County, Tennessee, performed an additional autopsy at the request of Mr. Sanders' family. Moreover, as part of the parallel federal investigation, Dr. Mary Case reviewed the autopsies and findings of Dr. Deidiker and Dr. Deering to draw her own independent conclusions. All three medical examiners reached the conclusion that Mr. Sanders died from "excited delirium."

Regarding Missouri homicide crimes, for any charge of murder (first or second degree) or manslaughter (voluntary or involuntary) to be filed under Missouri law, there must be evidence that one or more persons caused the death of Mr. Sanders. Because the medical experts have unanimously concluded that excited delirium caused Mr. Sanders' death, the investigation has not discovered sufficient evidence to support the requisite finding of causation against any officer or jailer.

Excited delirium is "[a] condition that manifests as a combination of delirium, psychomotor agitation, anxiety, hallucinations, speech disturbances, disorientation, violent and bizarre behavior, insensitivity to pain, elevated body temperature and superhuman strength." Keith Wesley, MD, FACEP, Medical Director for Minnesota State EMS and HealthEast Ambulance, *Excited Delirium Strikes without Warning*, JEMS [Journal of Emergency Medical Services] (Feb. 1, 2011), at <http://www.jems.com/articles/print/volume-36/issue-2/patient-care/excited-delirium-strikes-witho.html?c=1> (viewed March 15, 2018). See also, e.g., Di Maio, Theresa G. and Di Maio, Vincent J.M., *EXCITED DELIRIUM SYNDROME: CAUSE OF DEATH AND PREVENTION* (Taylor and Francis Group 2006); Ross, Darrell L. and Chan, Theodore C., *SUDDEN DEATHS IN CUSTODY* (Humana Press 2006).

According to medical authorities, when a person has a history of mental illness and substance abuse, especially cocaine and methamphetamine use, excited delirium becomes a potentially fatal event. Especially in cases where officers are attempting to restrain him or her, a person in a state of excited delirium will continue to fight being restrained until cardiac arrest occurs. When law enforcement notice the person is not breathing and in cardiac arrest, they typically attempt resuscitation, which is usually unsuccessful. Cardiac arrest from excited delirium is almost always fatal.

Mr. Sanders suffered a mental disturbance while in protective custody in the Mississippi County Jail, commencing before 2:00 pm. During that afternoon, he became agitated and belligerent, made repetitive and confused statements, yelled, experienced elevated body temperature, and became disoriented. This disturbance progressed for several hours before the forced entry to the cell was attempted at around 7:18 pm. Among other things, Mr. Sanders became more combative, had stripped nearly naked, and was sweating profusely before the final attempt to restrain him. Over the course of several hours, Mr. Sanders also refused to honor requests to come out of the cell or to let jailers in, and he successfully resisted several attempts to subdue or restrain him. Once the officers and jailers forcibly entered the cell, Sanders vigorously resisted attempts to restrain him.

Based on the conclusions of the medical examiners, these facts support the inference that Mr. Sanders began experiencing a lethal excited delirium well before the forced entry into the cell. Mr. Sanders' conduct once the officers and jailers entered the cell reinforces the medical examiners' finding that he was already in a state of excited delirium, at which point the medical chain of causes leading to Mr. Sanders' death was already well advanced. According to authorities, excited delirium "can only be stopped by early recognition of the condition, a coordinated approach to physical restraint and the rapid administration of drugs and interventions to treat the severe agitation and hyperthermia." Wesley, *Excited Delirium Strikes Without Warning, supra*.¹

In commenting on the effects of use of force by the Mississippi County Sheriff, jail staff and others, Dr. Deering, the expert retained by Mr. Sanders' family, specifically noted that while there were numerous superficial blunt trauma injuries on the body, none of these superficial injuries was the cause of death. Dr. Deering determined that, based on Mr. Sanders' conduct during the mental disturbance, combined with the toxicology from Sanders' liver showing recent methamphetamine and cocaine use, excited delirium was the cause of death. Dr. Deering further indicated that neither the use of Tasers nor any physical force applied to Mr. Sanders during the altercation after the forced entry changed the cause of death.

Given the unanimous opinions of the three medical examiners, the evidence supports the inference that Mr. Sanders' death arose from a medical condition beyond the control of officers and jail staff. The AGO concludes that there is insufficient evidence of causation to warrant filing criminal charges against the officers and jail staff involved in trying to restrain Mr. Sanders on May 5, 2017.

This charging recommendation has no bearing upon the criminal charges and civil proceedings against former Mississippi County Sheriff Cory A. Hutcheson. The AGO continues to pursue criminal charges against then-Sheriff Hutcheson for robbery, assault, forgery, tampering with computer data, and other crimes. See *State v. Cory Hutcheson*, 17MI-CR00273-01 (Robbery in the First Degree, Assault in the Fourth Degree, and Making A False Declaration); *State v. Cory Hutcheson*, 17MI-CR00274-01 (7 counts of Forgery, 7 counts of Tampering with Computer Data,

¹ One recommended course of action for law enforcement when they recognize a person is going into excited delirium is to restrain that person by using Tasers and restraining devices. Once the person is restrained, drugs designed to reduce the state of excited delirium need to be administered immediately. Thus, the attempts to subdue and physically restrain Mr. Sanders were arguably consistent with medical recommendations for patients experiencing excited delirium.

and one count of Misconduct by a Notary). The AGO also continues to pursue a civil proceeding in *quo warranto* against former Sheriff Hutcheson to prevent him from continuing in the office of Sheriff. *State ex inf. Joshua Hawley v. Cory A. Hutcheson*, 17MI-CV00263. The AGO will continue to vigorously prosecute those proceedings.

Further, the AGO's decision not to pursue homicide charges based on this incident does not mean that the conduct of jailers and officers responding to Mr. Sanders' health situation was justified or appropriate. For example, jailers violated protocol and best practices by making multiple unsuccessful attempts to subdue Mr. Sanders with Tasers and pepper spray through a narrow food-tray slot in the cell door. These attempts may support civil liability and/or disciplinary actions by jail authorities against those individuals. Further, the conduct of staff in responding to this incident raises grave questions about the training and supervision provided in the facility under then-Sheriff Hutcheson's leadership. And, as discussed further below, the facility has been the site of multiple deaths in disturbing circumstances in recent years. For all these reasons, the AGO continues to investigate both this incident and the facility.

Finally, as noted above, during this investigation, the AGO has become aware that multiple other deaths have occurred in relation to the Mississippi County Jail in recent years. For example, on December 24, 2014, an inmate of the Mississippi County Jail gave birth to a stillborn child after allegedly repeatedly requesting and being denied essential medical care for her high-risk pregnancy over a period of several days, in deeply troubling circumstances. *See Rhodes v. Mississippi County, et al.*, No. 1:16-CV-00084-AGF (filed July 29, 2016). In addition, on or about May 3, 2015, a young female inmate of the Mississippi County Jail died of an apparent drug overdose while in her jail cell after allegedly suffering inexcusable neglect at the hands of jail officials, again in troubling circumstances. Because of this information and other information obtained during the investigation of Mr. Sanders' death, the AGO has commenced a broader investigation into conduct and practices of jailers and other personnel at the Mississippi County Jail, to consider whether other civil or criminal proceedings may be warranted.